IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 21106 of 2004

Between:

Mohd. Khaja Mohiuddin Qadri, S/o. Mohd. Khaja Kaleeluddin Qadri,
R/o. 2-4-93, Jalal buqari Road, Bodhan, Nizamabad District.

..... PETITIONER

AND

1 The Government of Andhra Pradesh, Rep. by its Prl. Secretary,
Minorities Welfare (Wakf-I) Department, Secretariat, Hyderabad.
2 The District Collector, Nizamabad.
3 Khaja Jaleeluddin, S/o. Late Khaja Mohiuddin,
R/o. 2-4-473, Jalal Buqari Road, Bodhan, Nizamabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order direction more in the nature of Writ of CERTIORARI call for the records relating to the orders passed by the first respondent vide G.O.Ms.No.23 Minorities Welfare (Wakfs-1) department dt. 2-11-2004 and G.O.Ms.No.24 Minorities Welfare (Wakfs-1) department dt. 2-11-2004 and QUASH the same by duly declaring the orders passed by the first respondent as illegal, arbitrary and is a clear case of abuse of powers vested in him.

Counsel for the Petitioner : MR.V.RAVI KIRAN RAO

Counsel for the Respondent Nos.1 & 2: GP FOR SOCIAL WELFARE

Counsel for respondent NO.3: Sri M.Subba Reddy

The Court made the following :

ORDER:

This writ petition is filed questioning the orders passed by the 1st respondent, vide G.O.Ms.Nos.23 and 24, Minorities Welfare (Wakfs-I) dated 02.11.2004.

2. The brief facts that are necessary for disposal of the writ petition are as follows:

It is the case of the writ petitioner that previously his father was the Kazi of Wakf Board, Bodhan Division, Nizamabad District, which was succeeded from his grand father, and discharged duties effectively till his death. After his demise, the petitioner claimed the post of Kazi and the Government appointed him as 'Kazi' vide Memo, dated 14.11.1996 and subsequently, as 'Government Kazi' through G.O.Ms.No.39, dated 11.03.1998. Since then, he has been discharging his religious duties and also protecting the properties of the Wakf Board. While so, on 18.06.2002, the 3rd respondent, with a malafide intention to dislodge the petitioner from the post of Government Kazi, made a complaint to the 1st respondent making certain false allegations. Later, the 1st respondent directed the District Revenue Officer to cause an enquiry with regard to the allegations made against the petitioner. Accordingly, the District Revenue Officer issued a notice to the petitioner to appear for the enquiry. Pursuant to the same, the petitioner submitted his explanation, and having satisfied with the same, the respondent authorities dropped further proceedings. However, the 3rd respondent herein filed W.P.No.15137 of 2003 before this Court, seeking a direction to the Government to conduct enquiry against the petitioner. The said writ petition

was disposed of stating that it is open for the respondent authorities to consider the representations submitted by the

3rd respondent. Pursuant to the directions of this Court, the

2nd respondent-District Collector, Nizamabad, caused enquiry and submitted a report to the Government. On the basis of the said report, the 1st respondent issued a show cause notice to the petitioner calling upon him as to why he should not be removed from the office of Kazi. The petitioner submitted his explanation to the said show cause notice. The grievance of the petitioner is that the 1st respondent without taking into consideration the explanation submitted by him, passed the impugned orders. Hence, this writ petition.

3. A detailed counter affidavit has been filed on behalf of the

1st respondent denying the contentions made by the petitioner. It is asserted that Kazi is a respectable post and since the petitioner has not maintained the decency and decorum, the Government passed orders removing him from the said post in the light of the provisions laid down under Section 2 of the Khazies Act, 1880 (for short "the Act"), through G.Os., dated 02.11.2004. Further, as per the report of the

2nd respondent-District Collector, Nizamabad, the writ petitioner without obtaining any orders from the competent authority has illegally leased out certain extents of land instead of protecting the Wakf properties and that the father of the petitioner also sold away some lands to others illegally and kept the lands in Sy.Nos.80, 90, 91, 92, 73, 74 and 75 in his custody. It is also contended that the Government had examined the explanation submitted by the writ petitioner and also basing on the report submitted by the 2nd respondent, it came to the conclusion that the petitioner has not maintained decency and decorum of the post of Government Kazi and therefore, removed him from the said post.

4. A reply affidavit has been filed by the petitioner reiterating the contentions made in the affidavit filed in support of the writ petition.

5. Heard the learned counsel on either side.

6. Learned counsel appearing for the writ petitioner contended that the impugned orders do not indicate any valid reasons for removal of the petitioner from the post of Kazi, and that the report of the Joint Collector has not been furnished to the petitioner. More so, the impugned orders were passed basing on the bald statement made by one Bhoomaiah to the effect that the petitioner had leased out the lands to him. Further, since the impugned orders were passed without proper application of mind, the same is liable to be set aside.

7. Learned Government Pleader for Social Welfare, appearing on behalf of respondents 1 and 2, contended that after conducting a detailed enquiry, the 2nd respondent submitted a report to the Government and basing on that report, the impugned orders were passed. Therefore, the orders under challenge do not suffer from any irregularities calling interference of this Court.

8. Mr. M. Subba Reddy, learned counsel appearing on behalf of the 3rd respondent, contended that the petitioner ought to have informed the higher authorities about the selling of Wakf properties by his father after assuming the charge of office of Kazi since it is an hereditary post and he has to be honest, sincere and noble in discharging his duties as Kazi. Therefore, there are no grounds to interfere with the impugned proceedings.

9. The facts are not in dispute. Basing on the report of the 2nd respondent-District Collector, Nizamabad, and also the explanation submitted by the petitioner, the Government came to the conclusion that the petitioner has not maintained decency and decoram of the post of Government Kazi, and therefore, he was ordered to be removed from the post of Government Kazi, Bhodan Division, Nizamabad District. Thereafter, the 3rd respondent was appointed as a Kazi.

10. As per Section 2 of the Act, the State Government may, if it thinks fit, suspend or remove any Kazi appointed under this Section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the

office, or who refuses or becomes in the opinion of the State Government unfit, or personally incapable, to discharge the duties of the office.

11. Thus, it is clear that there are several grounds under which a Kazi appointed can be removed by the State Government. However, from the facts and circumstances of the case, this Court is concerned only with the misconduct on the part of the petitioner in execution of the office of Kazi.

12. The report of the District Collector, Nizamabad, dated 13.03.2003 goes to show that the present petitioner without obtaining the orders from the competent authority has illegally leased out lands in Sy.No.50 to an extent of Ac.2-18 guntas, Ac.2-22 guntas in Sy.No.80 and Ac.2-20 guntas in Sy.No.85 to one Birkur Bhoomaiah instead of protecting the wakf properties. It is further stated that the father of the petitioner has sold away the remaining Qazath lands to others illegally and kept the lands in Sy.No.80, 90, 91, 92, 73, 74 and 75 in his custody. The Mandal Revenue Officer also submitted details of the properties owned by the Wakf and also the lands of the Wakf sold by the father of the petitioner. The purported acts of Bhoomaiah cannot be taken as a ground in removing the petitioner. But at the same time, the petitioner has to discharge his duties properly and in accordance with law. Since the post of Kazi is a respectable post, he has to discharge his duties without any comment from any other sources.

13. The stand of the petitioner in the explanation submitted by him is that one B.Bhoomaiah, who was the Government Ex-employee, was a very influential person and has been sailing with the Government officials and all the way working under the illegal encroachers, and hence, the said Bhoomaiah was falsely claiming that he had leased out the lands to him. Even though, according to Section 56 of the Wakf Act, the petitioner has right to lease out the lands for a year but not more, but he had never exercised such right nor any occasion has arisen.

14. Except making a bald allegation that the Government officials colluded with Bhoomaiah, nothing has been alleged against the District Collector, who conducted

enquiry. The enquiry report would clearly go to show that the writ petitioner had leased out nearly seven acres and odd guntas of land to Bhoomaiah without obtaining any orders from the competent authority instead of protecting the wakf properties. The truth or otherwise of the report of the District Collector cannot be entertained and whether the Government has exercised its power properly in accordance with Section 2 of the Act or not is a question to be decided.

15. After considering the report of the District Collector and after perusing the explanation of the petitioner, I am of the opinion that the petitioner has not maintained decency and decorum of the office of Kazi. As per the provisions of Section 2 of the Act, if a person commits any misconduct in the office, then certainly, it is a ground for removal. Therefore, in my considered view, leasing out the lands without the permission from the competent authority itself is a misconduct. Further, being a Government Kazi, the petitioner has to protect and safeguard the properties of the Wakf Board. Moreover, the lands are under the cultivation of several persons and when his father himself sold away the wakf properties to several persons, the petitioner had not taken any interest to safeguard the wakf properties. Even after assuming the charge of office of Kazi, the petitioner ought to have informed the higher authorities about the selling of Wakf properties by his father. Therefore, the Government has properly exercised its discretion in removing the petitioner from the post of Kazi and the impugned orders do not suffer from any incurable infirmities.

16. No doubt, the impugned orders do not indicate any reasons, but, the report of the District Collector clearly indicates that the petitioner was not evincing any interest in protecting the properties of the Wakf Board and hence, the Government basing on the report of the District Collector removed the petitioner from the post of Kazi. Hence, there are no grounds to interfere with the impugned orders. The writ petition is devoid of merits and the same is liable to be dismissed.

17. Accordingly, the writ petition is dismissed. No order as to costs.

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K.C.BHANU,J

Dated:13.07.2005

GJ

To

1 The Prl. Secretary, Government of Andhra Pradesh,
Minorities Welfare (Wakf-I) Department, Secretariat, Hyderabad.
2 The District Collector, Nizamabad.
3 Khaja Jaleeluddin, S/o. Late Khaja Mohiuddin,
R/o. 2-4-473, Jalal Buqari Road, Bodhan, Nizamabad District.